

SERVED: December 23, 1993

NTSB Order No. EA-4047

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of December, 1993

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11831
v.)	
)	
STUART G. RAMSTAD,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered at the conclusion of an evidentiary hearing on April 21, 1992.¹ The law judge affirmed an order of the Administrator (which served as the complaint) suspending respondent's commercial pilot certificate

¹An excerpt from the hearing transcript containing the initial decision is attached.

Respondent submitted an appeal brief, to which the Administrator replied.

for 180 days for alleged violations of sections 61.3, 91.13(a), 91.119(a) and (c) of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Parts 61 and 91.²

According to the Administrator's complaint, respondent:

1) operated an aircraft, on 97 separate occasions, without a current medical certificate; and 2) on September 9, 1990, intentionally maneuvered his aircraft to overfly a person in a camp area at an altitude of about 40 feet. Respondent has appealed, asserting that the law judge erred in both his credibility assessment and exclusion of certain evidence.

²The regulations state, in pertinent part:

§ 61.3 Requirement for certificates, rating, and authorizations.

* * *

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter....

§ 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

* * * *

(c) Over other than congested areas. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

§ 91.13 Careless or reckless operation.

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

After consideration of the briefs of the parties and the record, the Board concludes that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. We adopt the law judge's decision as our own. A detailed exposition of the facts is unnecessary for the purposes of this opinion, since the initial decision is quite thorough.

Regarding his medical certificate, respondent concedes that it was not current. He also admits that he took off in a seaplane on September 9, 1990, from Fishtrap Lake, Alaska. He denies, however, that he then intentionally, or otherwise, buzzed the complaining witness, a hunter who was camped near the lake's shore. The testimony of this witness is incompatible with the testimony of respondent, such that the law judge was called upon to make a credibility finding in order to decide the case.

As we have stated numerous times, absent "arbitrariness, capriciousness or other compelling reasons," we will not disturb a law judge's credibility determination. Administrator v. Pullaro, NTSB Order No. EA-3495 at 3 (1992), and cases cited therein. The law judge was in the best position to evaluate the demeanor of the witnesses as they testified, and his factual determinations are entitled to, and will receive, our deference. See Administrator v. Jones, 3 NTSB 3649, 3651 (1981).

Respondent claims that the complaining witness's version of what took place was implausible. The law judge, however, after listening to the testimony of this witness, two FAA inspectors,

respondent, and respondent's wife, believed that the account of the facts as presented by the Administrator was not only plausible, but correct. The law judge gave a detailed and well-reasoned explanation for his decision and we see no basis for disturbing his determination.³

³Respondent's contention that the law judge erroneously excluded character evidence is without merit. He claims that the excluded testimony was a pertinent rebuttal to the Administrator's theory that respondent tried to use intimidation to keep a hunter from camping near "his" lake. The following exchange between Mrs. Ramstad and respondent's attorney is at issue:

Q. Have you ever seen [respondent] try to intimidate anyone with a firearm?

A. I have not.

Q. Do you think, based on your knowledge and experience, do you think that he would use a firearm in that manner?

[FAA ATTORNEY]: Your honor, I object to this.

JUDGE GERAGHTY: Sustained.

* * * Q. ...Have you ever known [respondent] to threaten or intimidate anyone with an airplane?

A. Never. He's always --

JUDGE GERAGHTY: No. There's no question pending. Never, was the answer. Thank you.

Transcript at 69-70.

The law judge also would not permit Mrs. Ramstad to answer the question of whether, as far as she knew, her husband had ever bothered anyone who had camped at the lake. It is our view that, contrary to respondent's assertion, the law judge did not err by limiting the testimony to the charges surrounding the flight of September 9, 1990. Similarly, it was not error to exclude testimony that the complaining witness's choice of campsite location was "in violation of various federal regulations" dealing with required distance from the shoreline. Respondent's brief at 12. These subjects were not pertinent to the determination of whether or not respondent violated the FARs.

Lastly, respondent seeks a reduction in the suspension period from 180 to 30 days. We see no basis for any such reduction as the evidence indicates, and the law judge found, that respondent intentionally, and without cause, flew his aircraft in a manner which would necessarily endanger the campsite below. Hence, the Administrator's choice of sanction would appear to be consistent with Board precedent for deliberate low altitude (buzzing) cases. See e.g., Administrator v. Steel, 5 NTSB 239 (1985) (180-day suspension). Indeed, the Board has expressed its view in a case of similar reckless conduct that a 180-day suspension seemed "exceptionally lenient." Administrator v. Dopp, 4 NTSB 1489, 1490 (1984). Therefore, we deny respondent's request.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order and the initial decision are affirmed; and
3. The 180-day suspension of respondent's commercial pilot certificate shall begin 30 days after service of this order.⁴

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

⁴For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).